

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLARENCE DELANEY, JR.,

Plaintiff,

-v-

1:18-CV-1193
(DNH/CFH)

CITY OF ALBANY; POLICE OFFICER
BRACE, Detective for the City of Albany/CIU;
POLICE OFFICER DIGIUSEPPE, Detective
for the City of Albany/CIU; POLICE OFFICER
JOHN DOE 1, Police Officer for City of Albany;
and POLICE OFFICER JOHN DOE 2, 3, 4,
Police Officers for the City of Albany,

Defendants.

APPEARANCES:

CLARENCE DELANEY, JR.
Plaintiff pro se
17-A-0236
Fishkill Correctional Facility
P.O. Box 1245
Beacon, NY 12508

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Clarence Delaney, Jr. brought this civil rights action pursuant to 42 U.S.C. § 1983. On April 4, 2019, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that some of plaintiff's claims be

dismissed with prejudice, some be dismissed without prejudice, some be permitted to proceed, and that he be given an opportunity to file a second amended complaint in accordance with the directives outlined in the Report-Recommendation. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. To the extent plaintiff seeks to bring claims against defendants Det. Brace, Det. DiGiuseppe, and the John Doe police officer defendants in their official capacities, these claims are DISMISSED with prejudice;

2. Plaintiff's official misconduct claim is DISMISSED with prejudice;

3. Plaintiff's false imprisonment, false arrest, and defamation claims insofar as they are brought against the individual defendants in their individual capacities are DISMISSED without prejudice and with opportunity to amend to specify (1) the charges brought against him and whether his conviction or sentence has been declared invalid, or whether there are any charges pending arising out of the incident set forth in the amended complaint; and (2) whether the alleged defamatory statement was published to a third party;

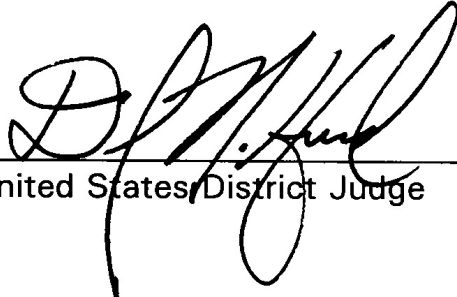
4. Plaintiff's Fourth Amendment excessive force and IIED claims against the individual defendants in their individual capacities shall proceed but the summons and complaint shall not be issued and served until plaintiff has an opportunity to amend his complaint to cure the defects identified;

5. Plaintiff is provided thirty (30) days from the date of this Decision and Order to file a second amended complaint limited to claims not otherwise dismissed with prejudice;

6. If plaintiff files a timely second amended complaint, it be forwarded to the Magistrate Judge for review; and

7. If plaintiff fails to file a second amended complaint within thirty (30) days of the date of this Decision and Order, the Clerk return the case to the Magistrate Judge for service of the amended complaint with the unamended claims deemed stricken.

IT IS SO ORDERED.



United States District Judge

Dated: April 30, 2019
Utica, New York.